

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Terves LLC,	)	
	)	Case No. 1:19-cv-1611-DCN
Plaintiff,	)	
	)	Judge Donald C. Nugent
vs.	)	
	)	
Yueyang Aerospace New Materials Co.	)	
Ltd. et al.	)	
	)	
Defendants.	)	

**Terves' Motion for Evidentiary Hearing on Preliminary Injunction Motion**

In accordance with Federal Rule of Civil Procedure 65, Terves LLC moves the Court to set Terves' motion for preliminary injunction (ECF #31), as supplemented by its August 7, 2020 filing (ECF #47), for an evidentiary hearing in October 2020 or at the earliest available time on the Court's calendar. Terves anticipates a full day hearing.

Terves' preliminary injunction motion, which was first filed four months ago, is now ripe for hearing. On May 1, 2020, Terves moved for preliminary injunction based on defendant Ecometal Inc. infringing Terves' '653 patent. (ECF # 31.) To prove infringement, Terves offered the testing of Ecometal's materials by Terves' metallurgical expert, Dr. Lee Swanger. (See ECF #30-2.) Ecometal opposed Terves' motion on July 2, 2020. (ECF #40.)

On August 7, 2020, Terves supplemented its injunction motion by adding Terves' newly-issued '740 patent. (ECF #47.) Dr. Swanger used his prior testing of Ecometal material to prove Ecometal also infringes the '740 patent, which is related to the '653 patent. (ECF #47, 48.) Other than Dr. Swanger's opinion that his prior testing proves

infringement of the '740 patent, Terves did not offer any new evidence with its supplement. (*See id.*)

Ecometal responded to Terves' supplement and asked that the Court hold Terves' injunction motion in abeyance. (ECF #51.) Terves' reply explains why the Court should deny that request. (ECF #52.)

Ecometal has had sufficient time to prepare to oppose Terves' preliminary injunction motion at hearing. Ecometal has obtained written discovery and document productions from Terves. Ecometal has deposed Terves' expert Dr. Swanger, Terves President Andy Sherman, and Terves scientists Brian Doud and Nick Farkas. Ecometal has had over one month to gather evidence and develop arguments against the '740 patent. Ecometal has engaged its own metallurgical expert, and he has offered opinions against the '653 patent. Even if Terves' supplement is treated as a renewed motion for preliminary injunction, the 30 days allowed by Local Rule for Ecometal to oppose that supplement will have expired on this Tuesday, September 8, 2020. Although Ecometal filed a response to Terves' supplement (ECF #51), Ecometal did not offer, and has not offered, any evidence or briefing rebutting Dr. Swanger's evidence that Ecometal infringes the '740 patent.

Terves further urges this Court for an immediate hearing because Terves' financial condition is worsening due to Ecometal's infringement, such that the Terves' business is severely impacted and threatened. Terves' customers cannot compete with Ecometal's customers when the material imported by Ecometal is priced well below Terves' production costs. Terves has reduced its employees to a 4-day work week, just this week

was forced to layoff 20% of its workforce, had to reassign another 20% to different businesses, and its revenues are 50% of what they were last year. Terves is losing money every day that Ecometal continues to infringe, hence the need for an immediate hearing.

Terves respectfully asks that the Court set Terves' motion for preliminary injunction for hearing in October 2020 or as soon as practicable.

Respectfully submitted,

Dated: September 4, 2020

s/ Matthew J. Cavanagh  
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